



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

August 21, 1984

You request a ruling regarding the application of the Massachusetts sales and use taxes to donations of computer systems by ("Company") to public educational institutions, private non-profit educational institutions, and non-profit civic organizations. Most of the donated equipment is "scientific equipment or apparatus" within the meaning of Section 170(e)(4)(B)(v) of the Internal Revenue Code. All of the donations are "charitable contributions" as defined in Section 170(c) of the Internal Revenue Code.

The Company manufactures the computer systems in plants located outside Massachusetts. Some of the component parts are purchased in Massachusetts; the Company presents Massachusetts exempt use certificates when the component parts are purchased. You state that the Company does not pay sales tax on its purchases of component parts in the state of New York; you do not know whether the Company pays sales tax on all its purchases of component parts purchased in other states.

Title to the computer systems will pass to the donee institutions and organizations in the Company's plants located outside Massachusetts. The Company will pay for delivery; the institutions and organizations will pay for installation, maintenance, and supplies.

1. Chapter 64H, Section 2 of the Massachusetts General Laws imposes a five percent sales tax on retail sales of tangible personal property. Chapter 64I, Section 2 imposes a complementary use tax on the storage, use, or other

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consumption in Massachusetts of tangible personal property purchased for storage, use, or other consumption in Massachusetts. A sale is defined as any transfer of title or possession for consideration. (G.L. c. 64H, § 1(12)(a)). A purchase is also defined as any transfer of title or possession for consideration. (G.L. c. 64I, § 1(2)(a)).

A donation of tangible personal property is not a transfer of title or possession for consideration. Therefore, the donations per se of computer systems to educational institutions and civic organizations by the Company are not transactions subject to sales tax or use tax.

2. Chapter 64H, Section 6(r) exempts from the sales tax sales of component parts of tangible personal property to be sold. If components of tangible personal property are purchased in Massachusetts, the purchaser may give an exempt use certificate to the vendor, certifying that the component parts will be so used. (G.L. c. 64H, § 8(f)). But Chapter 64H, Section 8(h) provides that

[i]f a purchaser who gives an exempt use certificate makes any use of the property other than the one therein certified, the use shall be deemed a retail sale by the purchaser as of the time the property is first so used and the cost of the property to him shall be deemed the gross receipts from such retail sale.

The Company purchased some of the component parts for the computer systems in Massachusetts and presented exempt use certificates for the component parts. But the computer systems are not to be sold but donated. Therefore, barring other applicable exemptions, the purchase under exempt use certificates in Massachusetts of component parts of computer systems which are later donated is subject to Massachusetts sales tax.

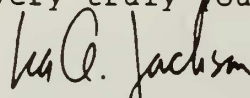
3. Chapter 64H, Section 6(jj), effective January 1, 1983, exempts from the sales tax sales of "scientific equipment or apparatus" as defined in Section 170(e)(4)(B)(v) of the Internal Revenue Code if the equipment or apparatus is donated by the manufacturer to a public or private non-profit educational institution in Massachusetts, to the
or to the

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Therefore, the Company's purchases in Massachusetts of component parts of computer systems to be donated are not subject to the Massachusetts sales tax if the computer systems are "scientific equipment or apparatus" as defined in Section 170(e)(4)(B)(v) of the Internal Revenue Code and if the computer systems are donated to public educational institutions, private non-profit educational institutions, the

or the
The Company's purchases in Massachusetts of component parts of all other computer systems which are later donated are subject to the sales tax.

Very truly yours,



Commissioner of Revenue

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